

Innovative Code Enforcement — If at First You Don't Succeed, Try, Try Again

by David Wesner

Those of us in code enforcement live by the credo used as the subtitle for this column. Our desired goal is to have the violation removed or corrected. As I have described in previous columns, human nature sometimes gets in the way of achieving this goal, and what works with one person in achieving the goal may not work on another. This means we always need to look at code enforcement on a case-by-case basis and sometimes, we need to get creative with how we address violators.

Perhaps, like me, you will occasionally come across stories about what other municipalities are doing to get compliance. One such story involves a municipality and properties that were neighborhood eyesores. The municipality, so the story goes, placed signs to inform the neighbors and any passersby about who owned the run-down properties. The hope was that the neighbors (and anyone else who cared to do so), rather than the city, would continually contact the owner to pressure him or her into correcting the violations. I have not seen or heard about any results regarding this type of effort, so I can't say whether such action has proven successful.

A new story sent to me by our favorite editor, Sophia Stadnyk (thanks, Sophia) involved a similar concept. Every municipality has likely faced the proliferation of unwanted advertising signs in public places: assistance for people facing foreclosure, offers to purchase distressed homes, sales of various products, and the like. These signs are typically posted on telephone poles (at least, that's where they're found in my municipality). Our initial response was to have our inspection division remove the signs, call the phone numbers listed on the signs, and inform the company that the signs were in violation and they would be fined unless they removed their signs and refrained from putting up additional signs. I think the more successful part of our response was the removal of the signs, and not so much the phone calls, although I don't seem to see as many of these signs as I used to. The municipality involved in the story chose a couple of innovative ideas in the hopes of stopping the unsightly onslaught. The first course of action was to offer a cash reward to the citizen who collected the most signs. This was strictly based on citizen participation. (I'm sure the reward would have drawn some significant citizen participation.)

It appears the municipality didn't have complete success with phase one, because the story described a second course of action: purchasing a software program that could be set up to automatically and continuously "robocall" the phone numbers on the signs. This course also involved citizen participation. Citizens were encouraged to call the numbers and tell whoever answered the phone to stop littering their community with signs. The hope here was that, by flooding the company with calls, the company would not be able to receive any calls from legitimate customers interested in whatever product or service the offender was offering.

Although the news story did not specify whether the municipality was successful with either course of action, I don't think it matters. [For the news story, involving the City of Hollywood, Florida, see http://www.firstamendmentcenter.org/fla-city-uses-robocalls-to-fight-nuisance-signs]. In my mind, what matters is the willingness of the municipality to take these steps to rid itself of an eyesore. Moreover, involving citizens should have proven beneficial for a couple of reasons. The residents realize their city is willing to take steps to get a problem corrected and may realize how difficult it can actually be to get a problem solved (no matter what kind of approach is taken), but appreciate the city's efforts to do so.

My municipality has discussed involving citizens in code enforcement efforts. However, we are concerned about the level of involvement. If the citizens are making notes about violations and taking photos, will they be harassed by the offending property owner? Even if they don't get harassed, what if they get hurt? We are also concerned about whether they will be required to testify concerning their involvement (which could likely have triggered the prosecution for a violation). As a result, we haven't moved forward with this form of citizen participation.

My municipality has, instead, facilitated the formation of neighborhood associations, made up of property owners within a certain area of our city. They meet once a month to discuss issues in their area and advise the City on property issues that they see. The City will then send out an inspector to determine if any violations exist and act as the complainant if a violation is found. We encourage the neighborhood associations to approach a property owner with possible code violations as a group, rather than individually, to avoid any possible harassment from the owner. This approach is also consistent with the "peer pressure" idea of neighboring property owners cajoling the violator to remedy the violation. We have seen some success with the ability of these associations to get a violation corrected. We also encourage them to try and get the violator involved as a member of their

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due process, and consequently, Bowlby was not required to go through the appeal process set out in the zoning ordinance in order to state a cognizable procedural due process claim. Addressing the "ripeness" requirement, the court noted that "the *Williamson County* final-decision requirement makes more sense when the taking alleged is a regulatory taking." Bowlby's injury was suffered at the time the Board revoked her permits, and, notwithstanding that the permits could be reinstated in the future, her permits were definitively taken away. A "procedural due process claim that is brought concurrently with a takings claim, such as Bowlby's, should be analyzed not under the principles of *Williamson County*, but according to "general ripeness principles'." Bowlby had not stated a due process claim that was "ancillary" to her takings claim, but rather, one that was separately cognizable, being a property interest in the permits to operate her business, not just in the business itself. Thus, she had an injury separate from any potential taking, as well as a final decision by the Board. Even if a court were to decide that the defendants did not violate the Takings Clause by causing Bowlby to lose her business, they still violated her right to procedural due process. *Bowlby v. City of Aberdeen*, No. 11-60279, 2012 U.S. App. LEXIS 9717 (5th Cir. May 14, 2012). ML

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seasoned advice from friends who have faced the same monsters, and lived to tell about it.

We are from the government and we are here to help – with Courtesy, Civility, and Collegiality.

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ronmental assessment be carried out.
20. *SOS v. Toronto (City)*, [2006] O.J. No. 671 (S.C.J.–Div. Ct.), at para. 51. Note also that there was an earlier decision which had resulted in the reconstitution of the Divisional Court panel. See *SOS v. Toronto (City)*, [2005] O.J. No. 4738.
21. Study, Kelman, L., and Soberman, R.M, *"Getting It Right," Lessons from the St. Clair Streetcar for the Implementation of Transit City* (January 7, 2010), available at http://www3.ttc.ca/About_the_TTC/Commission_reports_and_information/Commission_meetings/2010/Jan_20_2010/Reports/Transit_City_Impleme.pdf.
22. The Province was sued on the basis that it had negligently failed to ensure that construction was not disruptive. The Province indicated, at the outset, that it would move to dismiss the action against it on the basis that it owed no duty of care to the plaintiff. The claim against the Province was subsequently discontinued by consent.
23. The abuse of authority claims were based on alleged "sinister" policies of "blockbusting," as well as a "war on cars," all of which were stated to be an abuse of authority for the purposes of the claim.
24. *Curactive Organic Skin Care Ltd. v. Toronto (City) et al.*, 2011 ONSC 2041. See also, *Casa Luna Furniture v. Ottawa (City)*, [2009] O.J. No. 874 (S.C.J.), an earlier case from Ottawa with a similar result.
25. *Expropriations Act*, R.S.O. 1990, c. E. 26, s. 1(1).
26. *Ontario Municipal Board Act*, R.S.O. 1990, c. O. 28, s. 36.
27. *Curactive Organic Skin Care Ltd. v. Toronto (City) et al.*, 2011 ONSC 2041, at para 28.
28. *Ibid.* at para. 36.
29. *Ibid.* at paras. 6-7.
30. The court noted that the appellant had failed to plead any material facts to substantiate its allegations of "sinister" and secret policies, in spite of numerous requests.
31. *Antrim Truck Centre Ltd. v. Ontario (MOT)*, [2009] O.M.B.D. No. 1; aff'd, 2010 ONSC 156 (Div. Ct.); rev'd, 2011 ONCA 419; leave to appeal granted [2011] S.C.C.A 378.
32. *Antrim*, 2011 ONCA 419, at para. 79.
33. *Ibid.* at para. 144.
34. *Carpet Clear Out Corp. v. Wellington North*, [2011] O.M. B.D. No. 763.
35. *St. Pierre v. Ontario (MOTC)*, [1987] 1 S.C.R. 906.
36. *Ibid.* at para. 13. ML

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group. The hope is that, when that person sees what the association is trying to accomplish and the impact that property violations have, they may make the decision, on their own, to correct their own property violations. We have seen this approach succeed, as well.

The neighborhood associations also perform cleanup activities, as a group, to encourage all property owners in their area to keep their properties looking good. There has been great success in involving citizens with these kinds of associations. The one drawback is that these associations can get a bit grumpy if a particular violation exists longer than they think it should. Although our code enforcement officers are fairly successful in dealing with violations, these groups tend to focus on what still exists and what has come into existence since their last meeting. However, the overall benefit of these citizen groups outweighs the grief we sometimes get over particular violations.

My city council typically thinks of innovations only in terms of enacting a new ordinance. It seems to me that sometimes, new ordinances won't accomplish as much as we expect. Taking steps that are outside the normal response or way of handling a particular issue may be much more beneficial—innovation should include a level of "outside-the-box" thinking. Accordingly, I applaud any municipality using innovative approaches in code enforcement, and for living by the "try, try again" credo. ML